IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 119 OF 1988

Shankar Dhanappa Dhande. ... Appellant.
(Org.Plaintiff)

Versus.

1. M/s.B.S.Nadgiri and Company,
   Solapur.

2. Shivlingappa Basavkumarappa Nadgiri
   (Appeal abated vide Court's order
   dated 9.6.2004.)

3. Sidramappa Basavkumarappa Nadgiri,
   (since deceased by LRs.)
   A) Mallinath Shidramappa Nadgiri
   B) Mahantawa Sidramappa Nadgiri.
   C) Shrishail Sidramappa Nadgiri.

4. Gurusidhappa Basavkumarappa Nadgiri

5. Vishwanath Basavakumarappa Nadgiri.
   (deceased and deleted)

6. Smt.Ratnabai Revansidhe Nadgiri.

7. Smt.Sarubai Rupsen Nadgiri.
   (Appeal abated vide Court's order
   dated 9.6.2004.)

8. Abdul Rahim Abdul Rajak Khan,
   (Appeal dismissed vide Addl.
   Registrar's order dt.9.6.1989)

9. Dhanappa Somanappa Dhange.

10. Basavanappa Dhanappa Dhange. .. Respondents.
(Nos.1 to 7 Org.Plffs
& Nos.8 to 10 - Org.
Defendants.)

Shri R.V.More for the Appellant.

Shri G.S.Godbole for the Respondents Nos.1, 3A to 3C, 4, 6 & 10.

CORAM : ABHAY S. OKA, J.

DATED : 10th March, 2005.

ORAL JUDGMENT.

1. Heard the learned Counsel for the parties. On 11th March 1988 the Second Appeal was admitted by passing the following order:

> "Whether the amendment praying for a declaration of co-ownership referred to in para 10 of the Appeal Court Judgment was barred by terms u/s.58 of Limitation Act is a substantial question of law.
> Admit."

2. The Second Appeal is preferred by the original Defendant No.4. Initially the suit was filed by the Respondents Nos.1 to 7 only against the Respondent No.8 (Defendant No.1). The case of the Respondents Nos.1 to 7 is that they are the partners of the Respondent No.1-firm along with the original Defendants Nos.2 to 4. On 14th February 1974, the partnership firm i.e. the Respondent No.1 was dissolved. It is the case of the original Plaintiff that the original Defendant No.2 entered into a transaction on behalf of the Plaintiff

No.1-firm with the original Defendant No.1/Respondent No.8. The said transaction was effected on 7th February 1973. According to the original Plaintiffs, by the said Agreement the original Defendant No.1 agreed to sell immoveable property in favour of the Respondent No.1-firm. The case of the original Plaintiff is that the original Defendant No.2 signed the agreement for sale on behalf of the original Plaintiff No.1-firm. A suit for specific performance was filed to which as stated earlier only the Defendant No.1 was made party. The Defendant No.1 came out with a case that on 17th June 1987 he executed a registered sale deed in favour of the Defendant No.2 on the basis of the suit agreement. In view of the said contention, the original Plaintiff amended the plaint and contended that the sale deed dated 17th June 1987 was not legal and valid.

3. The suit was contested by the original Defendant No.1 by filing written statement. A contention was raised that he had entered into the transaction individually in favour of the Defendant No.2 and accordingly as per instructions of the Defendant No.2 he has executed the sale deed in favour of the Defendant No.2. The suit was also contested by the Defendants Nos.2 to 4 by filing Written Statement.

4. The trial Court dismissed the suit. An Appeal was preferred by the original Plaintiffs i.e. Respondents Nos.1 to 7 herein in the District Court. The said Appeal was partly allowed and the Appellate Court passed the following decree:

> "2. The decree passed by the trial Court is set aside. It is hereby declared that the sale deed of the suit property executed by defendant No.1 in favour of defendant No.4 on 17th June 1978 is in capacity as part of the dissolved firm, i.e. plaintiff No.1 and the partners of the said dissolved firm i.e. plaintiffs Nos.2 to 7 and defendants Nos.2 to 4 have all become co-owners of the property by virtue of the said sale deed.
>
> 3. Defendant No.4 shall pay costs of the suit and appeal to the appellants and shall bear his own."

The order sheet of the Second Appeal shows that the Appeal stands abated as against the Respondents Nos.2 and 7. Shri Godbole appearing for the Respondent No.1,

3A to 3C, 4, 6 and 10 has today placed on record a zerox copy of the death certificate of the Respondent No.4. The said zerox copy is taken on record and marked "X" for identification. The said certificate shows that the Respondent No.4 expired on 24th August 2003. As no application is made for bringing on record his legal representatives of the Respondent No.4 the Second Appeal stands abated as against the Respondent No.4. The office noting shows that the name of the Respondent No.5 stands deleted as he was dead. The office noting also shows that the Appeal stands dismissed as against the Respondent No.8 by order dated 9th June 1989 passed by the learned Additional Registrar.

5. Thus the position as existing today is that the Appeal stands abated as against the Respondents Nos.2, 4, and 7 and dismissed as against the Respondent No.8. The name of the Respondent No.5 has been deleted as he is dead.

6. By the impugned Judgment and Decree it is declared that the Respondents Nos.2 to 7 and 8 to 10 and the Appellant have become co-owners of the property. Thus there is a decree operating in favour of the Respondents Nos.2, 4, 5 and 7.

7. It is obvious that the decree passed by the Appellate Court is joint and inseparable. The Respondent No.5 has died and his name is deleted without bringing on record his legal representatives. The decree stands confirmed as against the Respondent Nos.2, 4, 6 and 7 as a result of abatement. The decree stands confirmed as against the Respodnent No.8. Thus the decree has attained finality in so far as the said Respondents are concerned. In this view of the matter and considering the nature of the Decree passeed by the Appellate Court, the Second Appeal cannot proceed as against the rest of the Respondents. Accordingly the Second Appeal is dismissed with no order as to costs.

Judge.